DOUBLE CRANE ENTERPRISE CO. LTD.

v.

DOUBLE CRANE ENTERPRISE (M) SDN. BHD. & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. D2-22-2350-89]
22 MARCH 1990

CIVIL PROCEDURE: *Conditional appearance by 1st defendant for setting aside of writ and statement of claim - 1st defendant made a party as declaratory order sought by the plaintiff binds the 1st defendant - Interested persons - Indirectly prejudiced - Whether rights of 1st defendant affected.*

The 1st defendant was incorporated in Malaysia on 26 May 1988 for the sole purpose of selling the goods manufactured by the plaintiff, a Taiwan based company. The plaintiff provided for the costs of incorporating and the share capital of the 1st defendant.

The 2nd defendant was until 9 May 1989, the chairman of the 1st defendant. The 3rd defendant was a supervisor employed by the 1st defendant and entrusted with the task of incorporating the 1st defendant. There was an oral arrangement between the plaintiff and the 2nd and 3rd defendants that all shares issued by the 1st defendant were to be held by the 2nd and 3rd defendants in trust for the plaintiff.

The plaintiff alleged that the 2nd and 3rd defendants converted the shares for their own benefit including those shares held by their nominees, the 4th to 6th defendants. The plaintiff seeks a declaration that the shares in the 1st defendant belong to them beneficially and that the 4th - 7th defendants transfer the shares to them directly.

The 1st defendant entered a conditional appearance to a writ of summons issued by the plaintiff. In an application to have the writ and statement of claim set aside, the 1st defendant pleaded that they have been wrongly joined as a party to the suit on the following grounds:

1. There is no privity of any contract or obligation between them disclosed in the statement of claim;
2. No relief is sought by the plaintiff against the 1st defendant, but only as against the other 6 defendants.

Held:

[1] The nature of the declarations sought by the plaintiff does not affect the rights of the 1st defendant in any way as the plaintiff's cause of action in not founded on a dispute between the plaintiff and the first defendant. In addition, the 1st defendant does not recognise the creation of any trusts in it favour.

[2] As a result, the 1st defendant had been wrongly joined as a party.

[Writ and statement of claim against the 1st defendant set aside. Costs to be paid by the plaintiff.]

Cases referred to:

London Passenger Transport Boards v. Moscrop [1942] AC 332
Yeng Hing Enterprise Sdn. Bhd. v. Liow Su Fah [1979] 2 MLJ 240

For the plaintiff - Sri Ram, Ariff Yusuf; M/s. Sri Ram & Co.
For the defendant - Sethu, Christina Chia; M/s. Christina Chia & Partners

JUDGMENT

Siti Norma Yaakob J:

The first defendant in this suit entered a conditional appearance to the writ of summons issued by the plaintiff and in the ensuing application to have the writ and statement of claim set aside, the 1st defendant pleaded that they have been wrongly joined as a party to the suit on the following grounds.

1. There is no privity of any contract or obligation between them disclosed in the statement of claim.
2. No relief is sought by the plaintiff against the 1st defendant, but only as against the other 6 defendants.

The facts from the statement of claim, reveal that the 1st defendant had been incorporated in Malaysia on 26 May 1988 for the sole purpose of selling the goods manufactured by the plaintiff, a Taiwan based company. All expenses for incorporating the 1st defendant and the share capital were provided for by the plaintiff. The 2nd defendant, who until 9 May 1989 was the chairman of the 1st defendant and the 3rd defendant, a supervisor, employed by the 1st defendant were entrusted with the task of incorporating the 1st defendant, and that pursuant to an oral arrangement between the plaintiff and the 2nd and 3rd defendants, that all shares issued by the 1st defendant were to be held by the 2nd and 3rd defendants in trust for the plaintiff. Despite this arrangement and despite directives issued, the plaintiff have alleged that the 2nd and 3rd defendants have converted the shares for their own benefit including those shares held by their nominees, the 4th to 6th defendants, from whom the plaintiff seek a declaration that not only the shares in the 1st defendant belong to them beneficially but that the 4th - 7th defendants transfer the shares to them directly.

Thus the dispute as revealed by the statement of claim is strictly between the plaintiff and the 2nd and 3rd defendants and has nothing to do with the 1st defendant although the subject matter of the dispute namely the beneficial ownership of the shares relates to shares of the 1st defendant. There is therefore no privity between the plaintiff and the 1st defendant, neither is there any relief sought against the 1st defendant and Article 6 of the 1st defendant's memorandum does not recognise the creation of any trust in favour of the 1st defendant. These matters are in no way disputed by the plaintiff, but nonetheless the 1st defendant is made a party as the declaratory order sought by the plaintiff binds the 1st defendant as well and for this relies on the case of *London Passenger Transport Board v. Moscrop* [1942] AC 332, which held that all interested persons who may be indirectly prejudiced by a declaration made by a Court in their absence, should be made parties whether by representation orders, or otherwise, before a declaration, by its terms affecting their rights, is made.

I do not consider that the nature of the declarations sought by the plaintiff affect the rights of the 1st defendant in any way as the plaintiff's cause of action is not founded on a dispute between the plaintiff and the 1st defendant leading to a rectification of the 1st defendant's share register but that the dispute is between the plaintiff and the other third parties, as to the beneficial ownership of the shares in the 1st defendant. Under such circumstances, coupled with the fact that the 1st defendant does not recognise the creation of any trusts in its favour, I had considered that the 1st defendant had been wrongly joined as a party by

the plaintiff and as such this suit is not maintainable against them. In this respect, the position of the 1st defendant is similar to the appellants in *Yeng Hing Enterprise Sdn. Bhd. v. Liow Su Fah* [1979] 2 MLJ 240. On that finding, I had allowed the 1st defendant's application to have the writ and statement of claim issued against them set aside, with costs to be paid by the plaintiff.

Also found at [1990] 2 CLJ 62